

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

In re XTREME POWER INC.,	§	CASE NO. 14-10096
XTREME POWER SYSTEMS, LLC, and	§	CASE NO. 14-10095
XTREME POWER GROVE, LLC	§	CASE NO. 14-10097
	§	Chapter 11
	§	(Jointly Administered Under
Jointly Administered Debtors	§	CASE NO. 14-10096)

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF XTREME POWER  
SYSTEMS, LLC’S OBJECTION TO DEBTORS’ EMERGENCY MOTION FOR FINAL  
ORDER AUTHORIZING POST-PETITION  
SECURED FINANCING**

TO THE HONORABLE H. CHRISTOPHER MOTT, UNITED STATES BANKRUPTCY  
JUDGE:

The Official Committee of Unsecured Creditors of Xtreme Power Systems, LLC (the  
“Committee”) files this Objection to Debtors’ Emergency Motion for Final Order Authorizing  
Post-Petition Secured Financing, as follows:

1. The Committee is without sufficient information to admit or deny the allegations  
contained in ¶1.
2. With respect to ¶2, the Committee admits that that paragraph summarizes the  
initial terms of the DIP financing.
3. The Committee is without sufficient information to admit or deny the allegations  
contained in ¶3.
4. With respect to ¶4, the Committee admits that this paragraph outlines the sales  
structure contemplated by the Debtors.
5. The Committee admits the allegations contained in ¶5.
6. The Committee admits the allegations contained in ¶6.
7. The Committee admits the allegations contained in ¶7.

8. The Committee admits the allegations contained in ¶8.

9. The Committee is without sufficient information to admit or deny the allegations contained in ¶9.

10. The Committee is without sufficient information to admit or deny the specific allegations of ¶10, though the Committee acknowledges that the Debtors engage in the battery and energy storage business.

11. With respect to ¶11, Debtors admit that XPI is privately held, but is without sufficient information to admit or deny the remainder of the allegations.

12. The Committee is without sufficient information to admit or deny the allegations contained in ¶12, except that the Committee is generally aware that a fire occurred at the Kahuku Wind Farm in Hawaii.

13. The Committee is without sufficient information to admit or deny the allegations contained in ¶13, except that the Committee is generally aware that the Company has raised capital through bridge financing and other financing efforts.

14. The Committee is without sufficient information to admit or deny the allegations contained in ¶14, other than the Committee is generally aware that the Debtors retained the Gordian Group and attempted to obtain either financing or negotiate a sale of the Company.

15. The Committee is without sufficient information to admit or deny the allegations contained in ¶15, other than the Committee admits that the Debtors obtained financing through Horizon.

16. With respect to ¶16, the Committee admits that the paragraph summarizes the Debtors' proposed sale.

17. The Committee is without sufficient information to admit or deny the allegations contained in ¶17.

18. The Committee is without sufficient information to admit or deny the specific allegations in ¶18, though the Committee is aware that the Debtors are parties to numerous debt instruments and various security instruments with different levels of priority.

19. With respect to ¶19, the Committee is without sufficient information to admit or deny the specific allegations contained in ¶19, except the Committee is generally aware that the Debtors have pledged all, or substantially all, of their assets to secure repayment of various debt obligations.

20. The Committee is without sufficient information to admit or deny the allegations contained in ¶20, except that the Committee is aware that the Debtors have pledged certain assets to SVB and Horizon.

21. Paragraph 21 is a statement regarding the authority sought, which need not be admitted or denied.

22. The Committee is without sufficient information to admit or deny the allegations contained in ¶22.

23. Paragraph 23 is a summary of terms, which need not be admitted or denied.

24. Paragraphs 24 – 27 are legal argument, which the Committee need not admit or deny.

25. With respect to ¶¶28 – 31, the Committee is not aware of the specific efforts made by the Debtors to obtain funding from other sources, nor was the Committee involved in the negotiations leading to the DIP credit facility and, therefore, the Committee cannot admit or deny these allegations.

26. With respect to ¶¶32 – 33, though the Committee is generally aware that SVB has a lien on certain of the Debtors' assets, the Committee is not in the position to admit or deny the factual allegations contained in those paragraphs.

27. With respect to ¶34, the Committee is not aware of the efforts made by the Debtors in connection with negotiating the credit facility. With respect to the legal arguments contained in ¶¶34, 35 and 36, the Committee need not admit or deny legal argument.

28. With respect to ¶37, the Committee is unable to admit or deny whether the Debtors have exercised sound business judgment with respect to obtaining financing, or whether the credit facility benefits the Estate, other than the Committee admits that keeping the Debtors operating and facilitating a sale appears to be in the best interest of the Estate.

29. With respect to ¶38, the paragraph constitutes legal argument which the Committee need not admit or deny.

30. With respect to ¶39, subject to the objections set forth below, the Committee generally agrees that the DIP credit facility is reasonable.

31. With respect to ¶¶41 – 46, these paragraphs relate to the need for interim relief, which has already occurred.

32. With respect to ¶¶47 – 48, these paragraphs relate to notice issues, which not need admitted nor denied.

### **OBJECTIONS TO ENTRY OF FINAL ORDER**

33. The Committee has attempted to negotiate with the Debtors and with Horizon regarding the terms of an appropriate final order authorizing the DIP financing. However, certain issues remain outstanding. The Committee objects to the entry of a final order until the final issues are resolved:

- (a) Proposed budget provides for \$20,000 for a carve out for Committee professional fees, which is inadequate given the size and complexity of these cases, and given the speed at which the sale process is occurring. The Committee believes that a carve out of not less than \$200,000 for the Committee counsel is appropriate for funding of the Committee counsel's legal fees through the projected closing date for any sale. Given the amount budgeted for Debtors' counsel, such carve-out is reasonable and necessary. The funding of the counsel for the Committee will ensure that

the interest of the unsecured creditors of XTreme Power Systems, LLC are adequately protected and represented in this case. Moreover, given that the primary beneficiary of this process at this point is the secured creditor, it is appropriate to ensure that the process is adequately funded for the benefit of the unsecured creditor constituency.

- (b) The proposed financing contemplates that Horizon will be protected from any potential actions seeking a surcharge of its collateral under 11 U.S.C. §506(c). Given that there is no agreement on protecting the interest of unsecured creditors, it is inappropriate to permit a waiver of the ability to seek a surcharge of collateral under 11 U.S.C. §506(c) at this stage.
- (c) The proposed financing contemplates that Horizon will receive a super-priority claim for its funding, which would gut the ability of the Estate to provide any recovery for administrative claims in this proceeding, including claims of counsel of Estate professionals and Estate counsel. It is inappropriate to allow an unsecured creditor to prime all of these claims while at the same time refusing to require that the secured creditor carve out appropriate allowances for such claims.
- (d) The Order and the loan documents contemplate that Horizon will receive a post-petition lien on causes of action held by the Debtors (excluding Chapter 5 claims). This includes liens on commercial tort claims. The initial review of the UCC filings and Security Agreements indicates that Horizon was not secured by liens on commercial tort claims on a pre-petition basis, as those claims have not been specifically identified in any security filings. Providing liens of those claims on a post-petition basis, particularly where there is no demonstrable benefit to the unsecured creditors at this stage, both provides protection that are not appropriate under the Uniform Commercial Code and which will essentially allow Horizon to boot strap its pre-petition claims through post-petition liens.
- (e) As currently worded, the Final DIP Financing Order provides for a five (5) day notice period, with an opportunity for the Debtors or the Committee to contest any declaration of default by Horizon. However, the draft Financing and Security Agreement allows Horizon to declare an immediate default and does not contain the same protections.
- (f) As currently drafted, the DIP Financing Order provides a number of protections that help Horizon, both as a pre-petition lender and DIP lender, but limit the rights and remedies of the Bankruptcy Estate. Since it is unclear at this point who benefits from DIP financing to facilitate a sale, the Committee objects to the DIP Financing Order as it is currently drafted and without providing additional protections to the Estate – even to the extent that such objection results in this Court ultimately deny the DIP on a final basis.

WHEREFORE, based on the foregoing, the Committee requests the Court condition final approval of the proposed DIP financing upon agreement of the Debtors and Horizon to the terms set forth above, and that the Committee have such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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By: /s/ Mark C. Taylor

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PROPOSED COUNSEL TO THE OFFICIAL  
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OF XTREME POWER SYSTEMS, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document has been served electronically upon all parties receiving the Court's CM/ECF notifications and on the attached Official Limited Service List as of February 11, 2014 by first class mail on this 19<sup>th</sup> day of February, 2014.

/s/ Mark C. Taylor  
Mark C. Taylor

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Irvine, CA 92612

Mahmoodzadegan-Gappy Trust  
1064 Amalfi Drive Pacific  
Palisades, CA 90272

Panagos, Steven and Joan (JTIC)  
1129 Sasco Hill Road  
Fairfield, CT 06824

Raich Trust dated September 17, 2001  
1058 Napoli Drive  
Pacific Palisades, CA 90272

Rozov, Yadin  
1 Anchor Drive  
Rye, NY 10580

Ryan, Christopher  
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SAIL 2010 Co-Investment Partners,  
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Sustainable Louisiana I, LP, SAIL  
Sustainable Louisiana II, LP, SAIL  
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Trust of Sash and Cindy Rental  
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**Xtreme Power Systems, LLC's  
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**Xtreme Power Grove, LLC's Top 20 Unsecured Creditors**

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